

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) 4:08CR3110
)
 Plaintiff,)
 v.) **MEMORANDUM AND ORDER**
)
 LINDSAY MARIE HARRY,)
)
 Defendant.)

After the case went to the jury, the government discovered that the defendant had not been convicted of a felony. Counsel for the government advised the court and defense counsel and a hearing was held.

Because the prosecutor had been allowed to question the defendant about whether she had been convicted of a felony¹ over the objection of defense counsel, and it is now clear that the defendant was convicted of a misdeamnor and not a felony, the defendant moved for a mistrial. Because I erred by allowing the government to ask the impeachment question regarding a felony conviction and because that error was potentially very prejudicial when all the other evidence is considered, I now grant the motion for mistrial.

The parties agree that this matter should be referred to Judge Piester to set a new trial date. They also agree that the matter should not be set for trial any earlier than two months or so from today's date in order to accomodate the schedule of defense counsel.

¹When the impeachment question was asked, the government had a good faith belief that the defendant had been charged and convicted of a felony based upon NCIC records and records from the Pretrial Services office. Those records turned out to be inaccurate.

IT IS ORDERED that:

1. A mistrial is declared.
2. This matter is referred to Judge Piester for further progression and a new trial setting. Trial shall not be scheduled any earlier than July 13, 2009.

May 7, 2009.

BY THE COURT:

s/Richard G. Kopf
United States District Judge